

STATE OF MICHIGAN  
COURT OF APPEALS

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STATE TREASURER,

Plaintiff-Appellee,

v

EDWARD LEE MORRISON,

Defendant-Appellant.

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UNPUBLISHED

September 24, 2002

No. 230100

Isabella Circuit Court

LC No. 00-000053-CZ

Before: Holbrook, Jr., P.J., and Zahra and Owens, JJ.

PER CURIAM.

Defendant, a prisoner at a Michigan correctional facility, appeals as of right from an order entered pursuant to the State Correctional Facility Reimbursement Act (SCFRA), MCL 800.401 *et seq.*, requiring that ninety percent of defendant's assets be paid to the State of Michigan as partial reimbursement for expenses incurred for his incarceration, including \$12,467.22 held by defendant's sister, Lynn Farkas. We affirm.

I. Facts and Procedure

Defendant was initially incarcerated on February 8, 1982, and paroled on November 24, 1982. Defendant pleaded guilty to a criminal sexual assault charge on June 11, 1998 and has been incarcerated since July 20, 1998. Upon the death of his father, defendant received life insurance proceeds of \$12,467.22. Defendant purported to transfer the funds to his sister, Lynn Farkas, and signed a power of attorney giving Farkas the authority to handle that money and, upon written request, to withdraw from defendant's personal bank account and send the funds to defendant's prison account. The power of attorney stated that it was in effect for the duration of defendant's incarceration. Pursuant to the SCFRA, the state sought reimbursement for defendant's care, including the money defendant inherited from his father. The complaint named Farkas as a codefendant.

Plaintiff filed a motion to show cause. Defendant responded that the state could not attach the money from the inheritance because he gave that money to his sister under the one-time gift provision of the tax code, and that taking ninety percent of the money would force defendant to live as an indigent prisoner. Counsel for plaintiff and defendant's father's estate appeared at the show cause hearing on September 15, 2000. Hearing no objection, the trial court entered plaintiff's proposed order. The final order required ninety percent of defendant's assets be paid to the state. Included in those assets was the \$12,467.22 held by Farkas in defendant's

name. Although the final order resolved the last pending matter, apparently a notice was sent to the parties that a scheduling conference would be held on October 24, 2000. In response, defendant filed a writ of habeas corpus, which was granted by the trial court on October 18, 2000. Although the writ was granted, no hearing was held on October 24, 2000 because the case was closed.

## II. Analysis

Defendant first argues that the trial court erred by apportioning the inheritance he received from his father's estate because it was not an "asset" subject to apportionment. We disagree.

We review a trial court's findings of fact for clear error. *Adams Outdoor Advertising, Inc v Holland*, 463 Mich 675, 681; 625 NW2d 377 (2001). Issues of statutory interpretation are questions of law that we review de novo. *Frank W Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 583; 624 NW2d 180 (2001); *Oakland Co Bd of Co Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998). The primary goal of judicial interpretation of statutes is to ascertain and give effect to the Legislature's intent. *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). If the plain and ordinary meaning of a statute is clear, judicial construction is neither necessary nor permitted. *Walters v Bloomfield Hills Furniture*, 228 Mich App 160, 163; 577 NW2d 206 (1999). We may not speculate regarding the probable intent of the Legislature beyond the words expressed in the statute. *In re Schnell*, 214 Mich App 304, 310; 543 NW2d 11 (1995).

The SCFRA permits the state to secure up to ninety percent of a prisoner's assets to reimburse the cost of incarcerating the prisoner. MCL 800.403(3). "Assets" are defined by statute as:

[P]roperty, tangible or intangible, real or personal, belonging to or due a prisoner or former prisoner including income or payments to such prisoner from social security, worker's compensation, veteran's compensation, pension benefits, previously earned salary or wages, bonuses, annuities, retirement benefits, or from any other source whatsoever, but does not include any of the following:

- (i) The homestead of the prisoner up to \$50,000.00 in value.
- (ii) Money saved by the prisoner from wages and bonuses paid the prisoner while he or she was confined to a state correctional facility.  
[MCL 800.401a(a).]

Defendant argues that the inheritance from his father was not his "asset" because he gave it to his sister, Farkas, as a one-time gift pursuant to 26 USC 2503(b). Moreover, for the first time on appeal, defendant argues that he gave his inheritance to his sister for use, in part, to care for his minor children.

26 USC 2503(b) is a section of the Internal Revenue Code providing a tax exclusion for the first \$10,000, plus an adjustment for inflation, of a gift given within the calendar year to one

person. The statute answers only the question whether the money would be taxable if defendant gave the money to his sister. It does not answer whether defendant gave the money to his sister or whether the money is defendant's asset under the SCFRA.

The trial court relied on defendant's power of attorney to conclude that the insurance proceeds were an asset of defendant. The power of attorney provides Farkas the limited authority, after receiving defendant's written approval, to remove inheritance money from defendant's personal account and place it in his prison account for the duration of defendant's incarceration. The power of attorney clearly supports the trial court's conclusion that defendant's inheritance was not given to his sister and that defendant's sister was holding the money for defendant's use to protect it from plaintiff. A prisoner cannot choose between debts to pay other obligations before reimbursing the state. *State Treasurer v Sheko*, 218 Mich App 185, 189; 553 NW2d 654 (1996).

Defendant next argues that the trial court's order violated the constitutional right to due process because neither defendant nor his sister was given the opportunity to speak before the trial court. We disagree.

Because this issue was not preserved at the trial level, we review it only to determine if defendant established plain error affecting substantial rights. *Hilgendorf v St John Hosp and Medical Center Corp*, 245 Mich App 670, 700; 630 NW2d 356 (2001). Defendant was served with the summons and complaint on August 18, 2000. He filed a response to plaintiff's complaint for order to show cause on September 8, 2000. He did not file a motion for a writ of habeas corpus to appear at the hearing scheduled for September 15, 2000. On September 15, 2000, the trial court entered plaintiff's proposed order without objection.

The United States and Michigan Constitutions provide that a person shall not be deprived of property without due process of law. US Const, Am XIV; Const 1963, art I, § 17. Due process related to attachment of a prisoner's assets pursuant to the SCFRA requires notice and an opportunity to be heard. *State Treasurer v Gardner*, 222 Mich App 62, 66; 564 NW2d 51 (1997), rev'd on other grounds 459 Mich 1 (1998).

Defendant received notice of the complaint and show cause hearing, submitted a response to the trial court, and failed to seek a writ of habeas corpus to appear at the show cause hearing. The record clearly establishes that defendant received adequate notice, was provided the opportunity to be heard and, in fact, was heard by the trial court through his written response to the order to show cause. The due process requirement was met in this case. *Gardner, supra*.

Finally, defendant argues that the court improperly awarded plaintiff costs for defendant's prior confinement in 1982. This issue also was not preserved below and our review is limited to whether defendant established plain error affecting substantial rights. *Hilgendorf, supra*. We find that any error was harmless.

Defendant concedes that the state is entitled to recover more than \$35,000 for the cost of his care beginning in 1998. Through this action, plaintiff recovered only \$10,320.50. Because the money collected from defendant was significantly less than the money defendant admits the state could recover, any error by the trial court in including the costs of defendant's 1982 incarceration was harmless, not warranting reversal. MCR 2.613(A).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Brian K. Zahra

/s/ Donald S. Owens